

**CONTRA COSTA CLEAN WATER PROGRAM
INSPECTION ACTIVITIES AGREEMENT
BETWEEN
CONTRA COSTA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT,
WEST COUNTY WASTEWATER DISTRICT,
AND
CITY OF HERCULES**

This Contra Costa Clean Water Program Inspection Activities Agreement ("Agreement"), is entered into by and among the Contra Costa County Flood Control and Water Conservation District ("District"), West County Wastewater District ("Inspection Agency"), and the City of Hercules ("City") is made and effective as of July 1, 2026 ("Effective Date").

RECITALS

WHEREAS, the County of Contra Costa ("County"), the District, and the 19 incorporated cities and towns in the County have joined together to form the Contra Costa Clean Water Program (the "Program"), pursuant to the Contra Costa Clean Water Program Agreement (2026 - 2041), dated July 1, 2026 (the "Program Agreement"). The parties to the Program Agreement are the County, the District, and the cities of Antioch, Brentwood, Clayton, Concord, Danville, El Cerrito, Hercules, Lafayette, Martinez, Moraga, Oakley, Orinda, Pinole, Pittsburg, Pleasant Hill, Richmond, San Pablo, San Ramon and Walnut Creek (the "Program Members"); and

WHEREAS, through the Program, the Program Members jointly implement some of their obligations under the Municipal Regional Stormwater NPDES Permit, NPDES Permit No. CAS612008, as may be amended or re-issued from time to time ("Municipal Regional Permit"). The San Francisco Regional Water Quality Control Board ("Regional Board") most recently re-issued the Municipal Regional Permit on May 11, 2022.

WHEREAS, District provides administrative support services to the Program, including collecting and distributing funds that pay for Program responsibilities under the Municipal Regional Permit.

WHEREAS, among other things, the Municipal Regional Permit requires the Program Members to conduct inspections of certain industrial and commercial businesses as specified in Provision C.4. and illicit discharge control activities specified Provision C.5., as those provisions may be amended from time to time in the Municipal Regional Permit (collectively, "MS4 Inspections"). MS4 Inspections include, but are not limited, to all inspection, investigation, reporting, and related obligations under the Municipal Regional Permit and as further directed by District.

WHEREAS, the Municipal Regional Permit identifies long-term goals of: eliminating non-stormwater discharges into municipal storm drains and creeks; conducting stormwater inspections of industrial and commercial facilities; controlling illicit discharges by conducting field surveys of the storm drainage conveyance system and identifying and eliminating the sources of non-stormwater discharges; and eliminating illicit connections and discharges resulting from inappropriate or illegal processes, activities or housekeeping practices; and

WHEREAS, such goals are furthered by Inspection Agency carrying out MS4 Inspections on City's behalf; and

WHEREAS, in addition to performing inspections to fulfill City's obligations under the Municipal Regional Permit, Inspection Agency also conducts inspections of certain industrial and commercial businesses as part of its wastewater regulatory obligations ("Wastewater Inspections"); and

WHEREAS, District, Inspection Agency, and City believe that efficiencies can be achieved by having Inspection Agency conduct MS4 Inspections on behalf City concurrently with Inspection Agency's Wastewater Inspections, which benefit the parties and regulated businesses.

WHEREAS, District, Inspection Agency, and City, as well as the other Program Members and sanitation districts previously entered into a prior inspection agreement dated October 26, 2009; and

WHEREAS, Inspection Agency desires to provide MS4 Inspections on behalf of the City under the terms set forth herein.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties to this Agreement agree as follows:

1. **Term.** The term of this Agreement is from the Effective Date of this Agreement until it is terminated pursuant to Section 2 below.

2. **Termination.**

A. **Inspection Agency Termination.** Inspection Agency may terminate this Agreement at its sole discretion by giving written notice to District and City at least 180 days prior to the effective date of the termination.

B. **District Termination.** District may terminate this Agreement at its sole discretion by giving written notice to Inspection Agency and City at least 180 days prior to the effective date of the termination. Notwithstanding the foregoing, District may terminate this Agreement by giving written notice to Inspection Agency and City at least 30 days prior to the effective date of the termination if City is in breach of the Stormwater Utility Area Agreement described in Section 3.

C. **City Termination.** City may terminate this Agreement at its sole discretion by giving written notice to Inspection Agency and District at least 90 days prior to the effective date of the termination. Alternatively, City may temporarily suspend receiving MS4 Inspections by Inspection Agency pursuant to this Agreement, at its sole discretion, upon giving the District and Inspection Agency at least 90 days prior written notice.

D. **Individual Party and Mutual Termination.** Any termination completed pursuant to sections 2.A through 2.C above effectively terminates this Agreement in its entirety and as to all Parties. In addition and notwithstanding the foregoing, this Agreement may also be terminated by mutual written agreement of the District, Inspection Agency, and City.

E. **Effect of Termination.** Upon the effective date of any termination of this Agreement, Inspection Agency shall cease performing MS4 Inspections. Provided Inspection Agency is not then in default, District shall compensate Inspection Agency for all services performed prior to such effective date in accordance with Section 8.

3. **Stormwater Utility Area Agreement.** City has executed a separate Stormwater Utility Area Agreement with the District that, among other things, provides for the invoicing from, and payment to, Inspection Agency for MS4 Inspection costs on behalf of City.

4. **Responsibilities of Inspection Agency.** On behalf of City, Inspection Agency will perform all the following services in accordance with the Municipal Regional Permit and applicable law:

A. **Conduct MS4 Inspections,** including illicit discharge control inspection activities, of industrial and commercial facilities and the exterior of residential properties to determine the regulated facility's compliance with the Municipal Regional Permit and applicable law. MS4 Inspections may have an educational component, as directed by District. The location and frequency of an inspection, investigation, or educational effort shall be at the direction of District in coordination with City and shall take place between 7:30 a.m. and 4:00 p.m. Monday through Friday, excluding holidays ("Normal Working Hours").

B. **Perform MS4 Inspections outside of Normal Working Hours** if mutually agreed to by District, City, and Inspection Agency, or if directed by District due to an emergency. In the event of an emergency, Inspection Agency will be compensated for any applicable overtime pay actually incurred by Inspection Agency.

C. Prepare inspection and investigation reports for each MS4 Inspection in accordance with the Municipal Regional Permit and applicable law,

D. Issue notices of violation, warning notices, and compliance orders (collectively, "Corrective Orders") to owners or operators of regulated facilities on behalf of City where Inspection Agency determines that violations or potential violations of the Municipal Regional Permit or applicable law have occurred or may occur. City hereby delegates to Inspection Agency all such authority to issue Corrective Orders on City's behalf in connection with MS4 Inspections. Inspection Agency has developed, or shall develop, a standardized approach to recommending and documenting corrective actions taken by operators of regulated facilities in order to address a Corrective Order issued by Inspection Agency. Inspection Agency shall promptly notify City and District's representative identified in accordance with Section 7 of any Corrective Order issued by Inspection Agency, by email at the address below, by the close of the business day following issuance.

E. Inspection Agency shall cooperate with City if City elects to utilize its civil or criminal code enforcement authority to address a Corrective Order directly with the owner or operator of a regulated facility. Such cooperation includes documentation of violations, preparation of documents for use in complaints and at hearings, and assistance in hearing preparation and presentation, including provision of testimony as requested. If Inspection Agency's performance of such enforcement services would result in an unreasonable expenditure of resources, then Inspection Agency shall notify City and District, and Inspection Agency's further involvement in such enforcement services shall be agreed upon by the parties.

F. At the Direction of City, Inspection Agency shall also refer Corrective Orders and related investigations and reports to appropriate enforcing entities, such as the District Attorney.

G. Retain all records through the later of: the term of this Agreement, the retention period outlined in Inspection Agency's retention schedule, or the retention period set forth in the Municipal Regional Permit, whichever is longer, as evidence of City's compliance with the Municipal Regional Permit. These records shall become property of City upon termination of this Agreement, at which time Inspection Agency shall promptly deliver them to City. These records shall be made available for inspection by City or District during normal business hours.

H. Train, supervise and manage its staff and contractors necessary to conduct MS4 Inspections in a consistent and lawful manner.

I. Provide advice and comments to District regarding District's preparation of educational materials for distribution to owners and operators of regulated facilities and the public. Inspection Agency shall also provide advice and comments to District regarding the Contra Costa County Green Business Program, as requested by District.

J. Provide comments to City and District regarding ordinances and policies necessary to conduct MS4 Inspections and carry out enforcement activities.

K. Purchase, operate, and maintain all equipment necessary to conduct MS4 Inspections, at Inspection Agency's own cost. Such capital and maintenance costs may be invoiced to District pursuant to Section 8 of this Agreement if the equipment is solely intended for MS4 Inspections and not Wastewater Inspections.

L. Provide quarterly reports to District, which describe all MS4 Inspections and Corrective Orders during the prior quarter, concurrently with the quarterly invoices specified in Section 8.C below. The final report of the fiscal year (fourth quarter) shall include a status report to City of Corrective Orders initiated by Inspection Agency by owner or operator name. The final report shall also include a hard or electronic copy of the Inspection Agency's databases of regulated facilities.

M. Utilize reasonable efforts to conduct MS4 Inspections fairly and in a uniform manner.

N. In accordance with Section 8.D below, provide an annual fiscal year budget to District that estimates the cost of performing the MS4 Inspections and other requirements of this Section 5 ("Annual Budget").

5. **Responsibilities of District.** District will perform the following services:

- A. Recommend revisions to City's ordinances and regulations as are necessary to allow Inspection Agency to lawfully perform MS4 Inspections and issue Corrective Orders.
- B. Authorize and prioritize inspections and investigations, with direction from City and Inspection Agency.
- C. Provide timely input on the scope of the following fiscal year MS4 Inspections during Inspection Agency's budget process and approve Inspection Agency's Annual Budget in accordance with Section 8.D.
- D. Reimburse Inspection Agency for authorized costs in accordance with Section 8.
- E. Recommend remedial actions to City and Inspection Agency in order correct an owner or operator's violation of the Municipal Regional Permit or other applicable laws.
- F. Provide educational materials for distribution to owners and operators of regulated facilities and the public.
- G. Provide comments to Inspection Agency regarding the format of MS4 Inspections, Corrective Orders, and reports.
- H. Perform other responsibilities as agreed to in writing among the District, Inspection Agency, and City.
- I. Notify City of issues affecting their compliance with the Municipal Regional Permit in a timely manner.
- J. Provide quarterly reports regarding MS4 Inspections and budget summaries to City.

6. **Responsibilities of City.** City will perform the following obligations:

- A. Provide Inspection Agency with current roster of City employees responsible for carrying out the stormwater program and related enforcement activities, including phone numbers and email addresses.
- B. Provide direction to Inspection Agency regarding enforcement actions.
- C. Cooperate with Inspection Agency and District to carry out their respective obligations under this Agreement.

7. **Agency Representative.** Each party shall designate in writing to each other an MS4 Inspections program coordinator and an alternate coordinator. The purpose of designating an MS4 Inspections program coordinator is to facilitate communication between the parties. Each party shall direct matters such as complaints, claims, legal challenges, and other disputes regarding the MS4 Inspections to its MS4 Inspections program coordinator who will transmit the matter to the District for resolution.

8. **Financial.**

A. District shall reimburse Inspection Agency for all authorized expenditures in furtherance of its obligations under Section 4 above, including the actual inspections and related administrative costs.. The costs eligible for reimbursement include, but are not necessarily limited to, labor, benefits, overhead, supplies, equipment, vehicle, laboratory, consultant, and insurance costs. Inspection Agency shall promptly notify the District if it believes that legal costs will be incurred in connection with the MS4 Inspections or Corrective Orders so that the parties may reach an agreement regarding the cost of legal services, if desired. Inspection Agency shall not mark up any costs it incurs in providing any of the required services.

B. Inspection Agency's labor costs shall be itemized at base cost per individual for time spent, plus an overhead multiplier for benefits, administrative overhead, supplies, equipment and insurance. Inspection Agency's overhead multiplier for the following fiscal year shall be submitted to the District as part of Inspection Agency's Annual Budget and approved by District annually.

C. Inspection Agency shall submit quarterly invoices to the District for services performed under Section 4 of this Agreement. Each invoice shall include an itemized accounting of the total cost of all services performed under Section 4. Inspection Agency shall submit each quarterly invoice according to the following schedule: (i) First Quarter - October 30; (ii) Second Quarter - January 30; (iii) Third Quarter - April 30; and (v) Fourth Quarter - July 30 of each fiscal year (July 1-June 30). District will pay each undisputed invoice within 45 days of receipt. In the event that District disputes the amounts stated on any invoice, within 30 days of receipt of the invoice District shall submit to Inspection Agency a written notice of dispute and the basis for the dispute. The parties shall endeavor to resolve any such disputes within a reasonable time after District's giving of a notice of dispute. Any dispute that is not resolved within five (5) business days shall be referred to the parties' respective managers for resolution.

D. In accordance with Sections 4.N, prior to the beginning of each fiscal year, District shall approve Inspection Agency's Annual Budget. City shall also review and approve the Annual Budget prior to District's final approval. Discussions for the annual budget shall begin in January prior to the upcoming fiscal year. Inspection Agency shall submit its Annual Budget by _____ and District shall act on such Annual Budget by _____. Inspection Agency shall not exceed its approved written Annual Budget, absent advance written consent of City and District.

9. Insurance. During the term of this Agreement, Inspection Agency shall carry Workers' Compensation and Employers' Liability Insurance as required by law, and General Liability and Automobile Liability insurance in the amount of at least \$1,000,000 per occurrence. Inspection Agency shall submit endorsements to City and District naming them and their officers, employees, and agents as additional insureds under such policies. If Inspection Agency is self-insured, written notification of the self-insurance program shall be made to the other parties to this Agreement within 30 days after the execution of this Agreement. Any change to self-insured status by Inspection Agency shall be reported to the District in writing within 30 days of such change.

10. Indemnification.

A. District Indemnity. District shall indemnify, defend and hold harmless Inspection Agency and City and each of them and their elected officials, officers, directors, agents, and employees from and against all suits, actions, legal or administrative proceedings, claims, demands, damages, consequential damages, liabilities, and expenses, arising out of or related to the District's willful misconduct or the negligent acts, errors or omissions of the District in the performance of this Agreement, except that City shall be solely liable for any fines resulting from its sole violations of the Municipal Regional Permit. The requirements of this Section 10.A. shall survive the termination or expiration of this Agreement.

B. Inspection Agency Indemnity. Inspection Agency shall indemnify, defend and hold harmless the District and City, and their respective elected officials, officers, directors, agents and employees from and against all suits, actions, legal or administrative proceedings, claims, demands, damages, consequential damages, liabilities and expenses, inclusive of constitutional or property rights claims, arising out of or related to Inspection Agency's willful misconduct or the negligent acts, errors or omissions of Inspection Agency in the performance of this Agreement, except that City shall be solely liable for any fines resulting from its sole violations of the Municipal Regional Permit. The requirements of this Section 10.B. shall survive the termination or expiration of this Agreement.

C. City Indemnity. City shall indemnify, defend and hold harmless the Inspection Agency and District and each of them and their officers, directors, agents, and employees from and against all suits, actions, legal or administrative proceedings, claims, demands, damages, consequential damages, liabilities, and expenses, arising out of or related to the City's willful misconduct or the negligent acts, errors or omissions of the City in the performance of this Agreement. The requirements of this Section 10.C. shall survive the termination or expiration of this Agreement.

11. **Notices.** Notices required or permitted under this Agreement shall be in writing and made as follows:

If to District, to: Joe Smithonic
Senior Civil Engineer
Contra Costa County Flood Control & Water Conservation District
255 Glacier Drive, Martinez, CA 94553

If to Inspection Agency, to: Joe Neugebauer
Environmental Services Manager
West County Wastewater District
2910 Hilltop Drive, Richmond, CA 94806

If to City, to: Glenn Dombeck
Director of Public Works
City of Hercules
111 Civic Drive, Hercules, 94547

12. **Dispute Resolution.** In the event of a dispute arising under this Agreement, the parties may jointly agree to submit the dispute to non-binding arbitration or mediation before a mutually agreed upon mediator or arbitrator. In the event the parties cannot agree to a mediator or an arbitrator within 30 days after a party requests arbitration by written notice to the other parties, the mediator or arbitrator may be selected by random draw, with each Party submitting one name of that party's preferred mediator or arbitrator.

13. **Amendments.** This Agreement may only be amended by written mutual agreement of the each of the parties hereto.

14. **Governing Law.** This Agreement is made and will be performed in the State of California, County of Contra Costa, and is governed by California law.

15. **Severability.** If any one or more of the terms, provisions, promises, covenants, or conditions of this Agreement were, to any extent, adjudged invalid, unenforceable, void, or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, priorities, covenants, and conditions of this Agreement shall not be affected and shall be valid and enforceable to the fullest extent permitted by law.

16. **Assignment.** No party shall assign any of its right, title or interest under this Agreement without the prior written consent of the other parties. Any purported assignment of any party's rights under this Agreement without written consent is void and without effect.

17. **Entire Agreement.** This Agreement contains the entire agreement between the parties and all prior understandings or agreements, oral or written, regarding this matter are superseded.

IN WITNESS WHEREOF, the parties have executed this Agreement as follows:

CONTRA COSTA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

Name: Warren Lai
Title: Public Works Director

WEST COUNTY WASTEWATER DISTRICT

Name: _____
Title: _____

CITY OF HERCULES

Name: _Patrick Tang
Title: _Acting City Manager